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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

**REHEARING  
DECISION**

HMO/170112

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was scheduled for February 23, 2016. Petitioner failed to appear for that February 23, 2016 Hearing. Accordingly, a *Decision* dated February 24, 2016 was issued dismissing petitioner's petition as abandoned. Hearings for December 29, 2015 and January 26, 2016 were rescheduled.

On March 24, 2016 the Division of Hearings and Appeals ["DHA"] received, via U.S. Mail postmarked March 22, 2016, a letter from petitioner dated February 26, 2016 requesting a rehearing. By a *Rehearing Request Order* dated March 24, 2016 petitioner's request for a rehearing was granted. A rehearing was held via telephone from Madison, Wisconsin on April 7, 2016.

The issue for determination is whether it was correct to deny MA funding for lumbar back surgery for petitioner.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: [REDACTED] MD  
Anthem  
BlueCross BlueShield  
N17 W24340 Riverwood Road  
Waukesha, Wisconsin 53188

ADMINISTRATIVE LAW JUDGE:  
 Sean P. Maloney  
 Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (53 years old) is a resident of Jefferson County, Wisconsin.
2. Petitioner is eligible for MA and is member of Anthem BlueCross BlueShield ["Anthem"] Health Maintenance Organization ["HMO"].
3. Petitioner requested that Anthem approve funding for lumbar back surgery for her.
4. Anthem denied petitioner's request for funding for lumbar back surgery.
5. Since a fall at work in August 2013 petitioner has had increasing back and leg pain and numbness and tingling in both legs; she has degenerative changes (arthritis) in her spine, mild spinal stenosis, and mild neuroforaminal stenosis; she does not have a fracture and does not have a tumor or an infection; she states that she is losing mobility in her legs and feeling in her arms and hands; she has been approved for neck surgery.
6. The requested lumbar back surgery is of 2 parts: decompression of the nerve roots; and, fusion of 3 vertebrae.
7. Based on test results and a review by a physician Board Certified in Orthopedic Surgery, the degree of narrowing in petitioner's spine does not appear sufficient to result in nerve root compression.
8. Based on test results and a review by a physician Board Certified in Orthopedic Surgery, no significant spondylolisthesis (slippage of one vertebrae in relation to the adjacent vertebrae) is noted for petitioner.

### **DISCUSSION**

The Wisconsin Department of Health Services ["DHS"] may enter into contracts for MA services with HMOs. Wis. Admin. Code § DHS 104.05(1) (December 2008); see also, Wis. Stat. § 49.45(9) (2013-14). Services available to MA recipients must be identified in the provider's contract with DHS and must be made known to all enrollees. Wis. Admin. Code § DHS 104.05(4) (December 2008). With certain exceptions, all HMOs that contract with DHS must provide to enrollees all MA services that are covered services at the time the MA HMO contract becomes effective. Wis. Admin. Code § DHS 107.28(1)(a)1.intro. (August 2015); See also, Wis. Stat. § 49.46(2) (2013-14).

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.

By law, MA pays only for medically necessary and appropriate health care services when provided to currently eligible MA recipients. Wis. Admin. Code §§ DHS 107.01(1) & 107.16(1)(a) (August 2015); See also, Wis. Stat. §§ 49.46(2) & 49.47(6)(a) (2013-14). In order for a service to be *medically necessary* it must meet several specific requirements. See, Wis. Admin. Code § DHS 101.03(96m) (December

2008). As with any eligibility denial, the burden is on petitioner to show that she is eligible for the requested services. *Lavine v. Milne*, 424 U.S. 577, 583-584 (1976). Petitioner has failed to do so.

One of the requirements for *medical necessity* is that the service must be appropriate with regard to generally accepted standards of medical practice. Wis. Admin. Code § DHS 101.03(96m)(b)3. (December 2008). The requested lumbar back surgery is of 2 parts: decompression of the nerve roots; and, fusion of 3 vertebrae. In the case, neither the decompression of the nerve roots nor the fusion of 3 vertebrae is appropriate with regard to generally accepted standards of medical practice. This is because: the degree of narrowing in petitioner's spine does not appear sufficient to result in nerve root compression (with regard to decompression of the nerve roots); and, no significant spondylolisthesis (slippage of one vertebrae in relation to the adjacent vertebrae) is noted for petitioner (with regard to the fusion of 3 vertebrae). See, *Anthem Clinical UM Guideline CG-SURG-33* current effective date April 7, 2015; and, *Anthem Clinical UM Guideline CG-SURG-38* current effective date August 18, 2014.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, it was correct to deny MA funding for lumbar back surgery for petitioner.

**THEREFORE, it is**

### **ORDERED**

The petition for review herein be and the same is hereby DISMISSED.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of April, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 14, 2016.

Division of Health Care Access and Accountability